



Omondi & another v Anyangu (Suing as the Legal Representative of the Estate of Joseph Anyangu) (Civil Appeal E032 of 2025) [2025] KEHC 13849 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13849 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E032 OF 2025
JM OMIDO, J
SEPTEMBER 25, 2025**

BETWEEN

EDWIN OMONDI 1ST APPELLANT

CHARLES ODHIAMBO 2ND APPELLANT

AND

MIRIAM ANDAYI ANYANGU (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOSEPH ANYANGU) RESPONDENT

RULING

1. The Appellant's Notice of Motion dated 20th March, 2025 is expressed to be brought under Sections 1A and 3A of the *Civil Procedure Act*, Order 42 Rule 6 and Order 51 of the Civil Procedure Rules and seeks the following orders:
 1. [Spent].
 2. [Spent].
 3. That pending the inter partes (sic) hearing and determination of this appeal, there be a stay of execution of the judgement and decree of the lower court, to wit Kisumu CMCC No. E183 of 2024; Miriam Anday Anyangu (Suing as the Legal Representative of the Estate of Joseph Anyangu) v Edwin Omondi & another.
 4. That costs of this application be provided for.
2. The matter was before me on 30th April, 2025 and on 26th June, 2025 and on both occasions, the parties expressly intimated to the court that the only issue that was outstanding was for the court to determine the security that is to be deposited as a condition for granting stay of execution pending appeal.



3. From their positions on the two dates, I understand the parties to mean that they were in consensus that stay of execution be granted on condition that security be deposited but were unable to agree on the nature of security and left the issue to the court for determination.
4. Thus then, the issue that I will proceed to determine is the nature and/or amount of security that the Appellants should furnish as a condition for granting stay of execution pending appeal and the period within which the same is to be furnished.
5. The Applicants relied entirely on the affidavit in support of the motion sworn on 20th March, 2025 by Mercy Maweu, whose contents I have considered. The Applicants proffer the position that they are willing to deposit in court half of the decretal amount as security for the performance of the decree.
6. On her part, the Respondent, vide her replying affidavit is of the view that sufficient security for the due performance of the decree, should the appeal fail, can only be an amount equivalent to the decretal sum plus costs.
7. The provision of the law that is applicable in an application for stay pending appeal is Order 42 Rule 6 of the Civil Procedure Rules. Let us read the said provision:

42(6)

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the Court Appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
- (2) No order for stay of execution shall be made under subrule (1) unless—
 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
- (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit, a stay of execution pending the hearing of a formal application.
- (4)
- (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
- (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.



(Underlined emphasis).

8. Regarding security, the above provision is clear, in my understanding, that the security that is required to be deposited is that that shall in the court's opinion be sufficient for the due performance of such decree or order as may ultimately be binding upon the Applicant.
9. As there is already a decree, the same can be the basis upon which the court can determine and set the nature of the security. The court however retains the ultimate discretion in determining the issue.
10. Judgement in the matter before the trial court was entered against the Applicants jointly and severally for a liquidated amount of Ksh.2,688,000/-. Costs were agreed at Ksh.164,360/-. That makes a total amount of Ksh.2,852,360/-.
11. Although the Applicant's state that they are willing to furnish security, they propose that the amount thereof be half of the decretal sum. There is however no reason given by the Applicants for that proposal and my view then is that this court has not been sufficiently moved to exercise discretion to allow the Applicants to deposit a sum less than the decretal amount plus costs. It must be remembered that discretion must always be exercised judiciously and the party seeking that the discretion be exercised in its favour must sufficiently persuade the court.
12. To that then, the orders that commend the motion dated 20th March, 2025 are as follows:
 - a. An order of stay of execution of the judgement and decree issued in Kisumu CMCC No. E183 of 2024 Miriam Andayi Anyangu (Suing as the Legal Representative of the Estate of Joseph Anyangu) v Edwin Omondi & another is hereby issued pending the hearing and determination of the instant appeal on the condition that the Appellants (the Applicants in the application) deposit in a joint interest earning account held with a reputable bank domiciled in or with a branch within Kisumu County, in the names of the two law firms on record for the parties, the decretal amount and costs totaling Ksh.2,852,360/-, within 45 days from the date hereof.
 - b. That subject to compliance with (a) above, the costs of the application shall abide the outcome of the appeal.
 - c. That in the event of default of any terms in (a) above, the order for stay of execution issued herein shall automatically stand vacated and the application dated 20th March, 2025 shall be deemed to have been dismissed with costs of Ksh.4,000/- effective the date of this ruling.
13. This appeal will be mentioned on 13th November, 2025 for directions.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 25TH DAY OF SEPTEMBER, 2025.

JOE M. OMIDO

JUDGE

For Appellant: Mr. Osino.

For Respondent: Mr. Osala.

Court Assistants: Mr. Ngoge.

